

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

AUG 14 2008

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

ROGER DALE CLARK,

Appellant.

2 CA-CR 2007-0135

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of  
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200601309

Honorable Boyd T. Johnson, Judge

AFFIRMED

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E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, appellant Roger Clark was convicted of two counts of child molestation and three counts of sexual conduct with a minor under the age of fifteen. The trial court sentenced him to a total of seventy-seven years in prison. Clark argues the trial court erroneously precluded evidence that limited his right to cross-examine witnesses and admitted evidence that was unduly prejudicial. Clark also claims the state presented insufficient evidence of three of the five counts as charged in the indictment. We affirm for the reasons set forth below.

### **Background**

¶2 All of Clark's convictions stem from the sexual abuse of his stepdaughter, K. At the time of Clark's trial in March 2007, K. was thirteen years old and in the seventh grade at school. The indictment alleged that between March 15, 2006, and April 15, 2006, Clark had had sexual contact with K. (count one), performed oral sex on her (count two), inserted his finger into her vagina (count three), and inserted his penis into her vagina (count four). The indictment also alleged that in 2002 Clark had "first . . . molested the victim by touching her vagina with his hands" (count five). Clark's wife, Darlene—K.'s mother—was separately charged with participating in some of the sexual abuse of K., which she admitted at Clark's trial. Clark maintained that the charges were based on lies manufactured by Darlene, K., and K.'s older sister, Sherry, for a variety of vindictive reasons. We set forth the facts below as they pertain to each issue raised. We view those facts in the light most

favorable to upholding the convictions. *See State v. Cox*, 214 Ariz. 518, ¶ 2, 155 P.3d 357, 358 (App.), *aff'd*, 217 Ariz. 353, 174 P.3d 265 (2007).

### **Limiting Cross-Examination**

¶3 Clark first argues that the trial court abused its discretion by limiting his cross-examination of K. and Sherry regarding past allegations of sexual abuse they had made against others. As a result, he claims he could not properly establish their motives and attack their credibility. Similarly, he argues the court erred in precluding evidence of his past domestic violence against Darlene, violence that he claims would have provided her with a motive to fabricate evidence against him. We review a court's decision to limit cross-examination for a clear abuse of discretion. *State v. Cox*, 201 Ariz. 464, ¶ 5, 37 P.3d 437, 439 (App. 2002).

#### **K.'s Past Allegation**

¶4 Clark filed a pretrial motion, seeking leave to question K. at trial about allegations she had made that her prior stepfather, Walter, had molested her several years earlier. Clark claimed, as he does on appeal, this evidence was admissible as a false accusation made by a victim against another person pursuant to A.R.S. § 13-1421(A)(5).<sup>1</sup>

¶5 The record suggests Walter was charged with and acquitted of molesting K. in a case in which K. was not medically evaluated and did not testify. The state opposed

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<sup>1</sup>On appeal, Clark does not assert there existed alternative grounds for admitting this evidence under § 13-1421, as he did in the trial court.

Clark's motion to admit evidence relating to the prior accusation on the ground that both K. and her mother maintained the earlier allegations were true and Clark had not sufficiently demonstrated to the contrary. Clark responded that he was hampered from doing so because he was not permitted to interview K. before trial. The trial court ruled the prior accusations would be admissible only to show K. knew sexual touching among family members was not normal. Otherwise, because the court found Clark had not proven the earlier allegations were false, it precluded Clark from introducing evidence about the allegations.

¶6 Section 13-1421 limits the kind of evidence that may be admitted relating to a victim's prior sexual conduct in a sex-offense case. It provides, *inter alia*, the following may be admitted: "[e]vidence of false allegations of sexual misconduct made by the victim against others." § 13-1421(A)(5). The proponent of such evidence has the burden of showing clearly and convincingly that the victim's allegations against others were false. § 13-1421(B).

¶7 The trial court did not abuse its discretion in finding that Clark had failed to sustain that burden. The only evidence Clark offered to establish K.'s allegations were false is evidence that Walter had been acquitted of charges that arose out of those allegations.<sup>2</sup> But an acquittal in a criminal trial merely demonstrates that the state did not sustain its

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<sup>2</sup>Clark also suggests on appeal that records generated by Child Protective Services are "exempt from A.R.S. § 13-1421" under *State v. Gilfillan*, 196 Ariz. 396, 998 P.2d 1069 (App. 2000), and somehow "me[e]t his burden [of] proving the false allegation." These conclusory assertions do not constitute a properly developed legal argument as required by Rule 31.13(c)(vi), Ariz. R. Crim. P., nor does *Gilfillan* support that argument.

burden of proving beyond a reasonable doubt the defendant committed the charged offense; it does not legally demonstrate the truth or falsity of the charges in an indictment or, by extension, the allegations of a purported victim. *See United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984) (“[A]n acquittal on criminal charges does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt.”); *accord Pfeil v. Smith*, 183 Ariz. 63, 65, 900 P.2d 12, 14 (App. 1995). Indeed, an acquittal may be required even if the jury believes a purported victim’s allegations are likely true. *See State v. Portillo*, 182 Ariz. 592, 596, 898 P.2d 970, 974 (1995) (proof beyond reasonable doubt requires more than showing “a fact is more likely true than not or . . . its truth is highly probable”). Accordingly, the trial court did not abuse its discretion when it precluded Clark from introducing evidence about K.’s prior accusations against Walter.

#### Sherry’s Past Allegations

¶8 The trial court similarly limited Clark’s cross-examination of Sherry, K.’s older sister. Sherry and K. both testified that K. had confided in Sherry about Clark’s sexual abuse and that it had been Sherry who reported the allegations to Child Protective Services (CPS). Sherry was in her early twenties at the time and did not reside with Darlene or Clark. In fact, Sherry had lived with her biological father, Carl, most of her life. From the time she was six until she was eighteen, Sherry lived with Darlene for only a nine-month period after she was sexually abused by her father. Darlene then sent Sherry back to live with her father. According to Clark, Sherry’s anger toward Darlene for returning her to her father and

Sherry's desire to gain custody of K. were the primary motives for Sherry to fabricate the charges against him, and therefore facts supporting those motives went to the heart of his case.

¶9 The state filed a motion in limine to preclude Clark from introducing evidence of accusations of sexual abuse Sherry had made against her father. Clark argued the evidence was necessary to show Sherry "ha[d] a bias and a motive" to take revenge upon Darlene and, by extension, him, by convincing K. to lie about her own sexual abuse. The trial court permitted Clark to ask Sherry about accusations she had made in the past to develop Sherry's possible motive in the present proceedings, but the court ruled "the specifics of the allegations . . . and the CPS investigation" were inadmissible "because there is no documentary background . . . [and] that's taking the jury off on a tangent." Defense counsel agreed with the trial court, stating, "I don't believe that . . . going into all that detail helps them at all. . . . [T]he fact that there was an allegation and despite that [Sherry] went back to live with [her father] is all that is necessary. Anything more is just irrelevant."

¶10 At trial the state objected to Clark's cross-examination of Sherry regarding her earlier abuse, the trial court clarified its ruling, and the state withdrew its objection. The following questioning then took place:

[DEFENSE]: Sherry, the nine month time period when you lived with your mom, that was after—that was after occasions where you were sexually abused by your father; correct?

[SHERRY]: Yes.

[DEFENSE]: At the end of that nine month time period, you were sent back to go live with your father; correct?

[SHERRY]: Yes.

[DEFENSE]: Because of that, did you carry some feelings about your mother?

[SHERRY]: No.

[DEFENSE]: Were you angry at your mother for sending you back to live with your father?

[SHERRY]: No.

[DEFENSE]: No further questions, Your Honor.

¶11 Clark now claims the court's ruling was erroneous and dealt a "severe blow to [his] case." We disagree and find the court appropriately exercised its discretion in limiting the questioning as it did.

¶12 "The right to confront witnesses guaranteed by the Sixth and Fourteenth Amendments includes the right of cross-examination to attack a witness' general credibility or to show his possible bias, prejudice, or self-interest in testifying." *State v. Munguia*, 137 Ariz. 69, 71, 668 P.2d 912, 914 (App. 1983). Yet trial courts retain the discretion to place reasonable limits on cross-examination so as to promote efficiency and avoid confusing the issues. *See* Ariz. R. Evid. 403; *see also State v. Adams*, 155 Ariz. 117, 121, 745 P.2d 175, 179 (App. 1987). Accordingly, a defendant's right to cross-examine witnesses does not entitle him to introduce evidence solely for the purpose of contradicting a witness on a collateral matter. *State v. McGuire*, 113 Ariz. 372, 373-74, 555 P.2d 330, 331-32 (1976).

Because Clark had no objection to the trial court's limitation of the scope of his cross-examination, Clark is not entitled to relief unless he can demonstrate that the limitation constituted fundamental, prejudicial error. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607-08 (2005).

¶13 Here, the trial court limited Clark's ability to question Sherry about collateral issues—the specifics of her sexual abuse by her father—while still giving Clark leeway to develop Sherry's motives to lie in this case. During cross-examination, the court allowed Clark to elicit from Sherry that she had been sexually abused by her father and that, notwithstanding that fact, her mother had sent her back to live with him. Her potential bias against Darlene, and possible motive to lie about K.'s abuse to punish Darlene and secure custody of K., were therefore fully presented to the jury. The trial court did not err fundamentally or otherwise in limiting the scope of Clark's cross-examination of Sherry.

#### Precluding Domestic Violence Evidence

¶14 Before trial, the state filed a motion in limine to preclude any evidence of prior domestic violence between Darlene and Clark based on its irrelevance and potential to prejudice the defendant. And at trial, the state specifically requested that the court admonish Darlene not to refer to Clark's acts of domestic violence against her. Clark "agree[d] it [was] too prejudicial to get into," for the reasons offered by the state and added that not only Darlene, but also K., should be admonished not to discuss Clark's physical violence against Darlene or herself. The trial court asked, "Do you agree with the State's



position that even if [domestic violence against Darlene] is relevant or slightly relevant, its probative value is far outweighed by its prejudicial effect?” Clark responded, “Yes.” Nonetheless, he now asserts the trial court erred in precluding this evidence because it was admissible “to show that K[.] and Darlene had a motive behind fabricating a story against [him]” under Rule 404(b), Ariz. R. Evid., and its exclusion unreasonably limited his right to cross-examine witnesses.

¶15 Under the invited error doctrine, “one who deliberately leads the court to take certain action may not upon appeal assign that action as error.” *Schlect v. Schiel*, 76 Ariz. 214, 220, 262 P.2d 252, 256 (1953). If an alleged error is invited, we will not address whether it is fundamental. *State v. Logan*, 200 Ariz. 564, ¶ 9, 30 P.3d 631, 632-33 (2001).

¶16 Here, Clark agreed that evidence of his prior domestic violence should be precluded, he told the court repeatedly that its probative value was outweighed by its danger of prejudice, and he even asked that witnesses be admonished not to refer to his violent episodes. Any error the court arguably made in excluding the evidence was thus invited by Clark. The fact that the court’s ruling came from a motion originally made by the state is inconsequential. *See, e.g., State v. Pandeli*, 215 Ariz. 514, ¶ 50, 161 P.3d 557, 571 (2007) (holding defendant invited error by agreeing testimony of separate child molestation incident was “admissible ‘other act’ evidence”). Because Clark invited the alleged error, we need not address the issue further.

### **Evidence Relating to Prior Conviction**

¶17 Clark next argues the trial court erred in admitting certain details of his prior felony conviction for driving under the influence of an intoxicant (DUI), namely “that K[.] was in the vehicle during [his] prior Aggravated DUI.” The trial court permitted the state to impeach Clark with his prior felony conviction when he testified, pursuant to Rule 609, Ariz. R. Evid. Noting a departure from its normal practice of sanitizing such convictions, the court ruled that if Clark chose to address the nature of the offense for his own advantage, the state would be allowed to question him about the identity of the victim of that offense. Because Clark did not object below, we review the court’s ruling for fundamental, prejudicial error. *See Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d at 607-08. Although we find the court erred in admitting evidence that K. had been in the car at the time he committed the offense, that error was neither fundamental nor so prejudicial as to justify relief.

¶18 Rule 609 allows a party to impeach a witness with evidence that the witness has been convicted of a felony. The rationale for the rule is that “[t]he perpetrator of a major criminal act has demonstrated such a lack of scruples as to show a willingness to give false testimony.”” *State v. Williams*, 144 Ariz. 433, 438, 698 P.2d 678, 683 (1985), *quoting State v. Malloy*, 131 Ariz. 125, 127, 639 P.2d 315, 317 (1981). Given its limited purpose, however, evidence admitted under Rule 609 may generally provide, at most, the date, location, and nature of the offense. *See State v. Beasley*, 205 Ariz. 334, ¶ 19, 70 P.3d

463, 467 (App. 2003); *cf. Williams*, 144 Ariz. at 438, 698 P.2d at 683 (state generally establishes probative value of conviction with proof of date, place, and nature of offense). In order for the nature of the offense to be disclosed, the trial court must first find that the probative value of this information outweighs its prejudicial effect. *Beasley*, 205 Ariz. 334, ¶¶ 19, 25, 70 P.3d at 467, 468-69. Other details, such as the underlying facts of a prior conviction or the identity of a past victim, are typically inadmissible because they have no bearing on a witness's character for truthfulness. *Cf. id.* ¶¶ 18, 25 (trial court abused discretion by allowing state to elicit testimony defendant committed former aggravated assault against brother without weighing probative value against prejudicial effect).

¶19 Here, the trial court allowed the state to elicit details of the offense for purposes outside the scope of Rule 609. But K.'s presence in the vehicle when he committed a felony DUI was simply not a fact necessary to establish the nature of the offense. While the trial court apparently concluded those details were appropriate for impeachment, we do not see how they addressed his credibility as a witness. To the extent this information had any relevance whatsoever, that relevance was limited to suggesting Clark had a propensity to neglect K.'s welfare—a purpose forbidden by Rule 404(a), Ariz. R. Evid. Nor has the state advanced any other legitimate purpose for eliciting this information. Indeed, the court failed to explicitly articulate any permissible theory of relevance for the evidence, or weigh the probative value against any danger of unfair

prejudice—necessary steps if the state sought to admit prior bad acts pursuant to Rule 404(b).

¶20 But that error was not fundamental—that is, error that goes to the foundation of a defendant’s case, takes away from the defendant a right essential to his defense, and denies the defendant the possibility of a fair trial. *Henderson*, 210 Ariz. 561, ¶ 19, 115 P.3d at 607. Although the ruling challenged here was unfavorable to Clark to the extent it suggested a pattern of disregarding K.’s health and welfare, that evidence did not go to the heart of his case, limit his defense, or deny him the possibility of a fair trial.

¶21 Clark’s defense did not anchor itself on the premise that he was an ideal stepfather. To the contrary, Clark emphasized during trial and on appeal that his case depended on demonstrating motives that K., Darlene, and Sherry may have possessed for fabricating charges against him. In this vein, Clark complains on appeal that the trial court *precluded* evidence that he had engaged in acts of domestic violence against Darlene—evidence no less prejudicial to his character and status as a responsible family member. And, in assessing whether a reasonable jury would have reached a different verdict but for this error, we note both Darlene and K. provided detailed testimony describing Clark’s sexual crimes against K. Although Clark maintained both had motives to fabricate evidence against him, Darlene’s statements to investigating officers conceded her own

participation in the sexual abuse of K.<sup>3</sup> *See Henderson*, 210 Ariz. 561, ¶¶ 26-27, 115 P.3d at 608-09 (articulating standard for finding prejudicial, fundamental error).

¶22 Clark has not sustained his burden of establishing a reasonable jury would have reached a different verdict but for this error. Thus, we will not disturb his convictions on this ground.

### Hearsay

¶23 Clark contends the trial court erroneously admitted hearsay evidence by allowing K. to testify, over his objection, about Darlene's statement that she had wanted the sexual abuse to stop. However, we need not address whether the trial court should have precluded such testimony because, even assuming the court erred, the error was harmless. *See State v. Eastlack*, 180 Ariz. 243, 256-57, 883 P.2d 999, 1012-13 (1994) (when erroneous admission of hearsay evidence harmless, conviction need not be reversed).

¶24 Error is harmless if a reviewing court can determine beyond a reasonable doubt that it did not affect the verdict. *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993). The erroneous admission of hearsay evidence may be harmless when it is merely cumulative, *see State v. Jones*, 188 Ariz. 534, 540, 937 P.2d 1182, 1188 (App. 1996), and the declarant is otherwise subject to thorough cross-examination. *See State v. Hoskins*, 199 Ariz. 127, ¶ 66, 14 P.3d 997, 1014 (2000).

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<sup>3</sup>Although Darlene had been provided use immunity for her trial testimony, she had previously admitted involvement in the sexual abuse of K. in statements to investigating officers.

¶25 Here, the alleged hearsay was cumulative and trivial. The state elicited K.’s testimony regarding Darlene’s statements in the context of questioning K. about a meeting at a restaurant. According to K., during that meeting Clark tried to convince K. and Darlene to move back in with him. But K. also testified about her own conversation with Clark during which she had agreed to live with Clark if he promised not to “do that stuff any more.” According to K., he then agreed to stop “messaging” with her. Moreover, the inculpatory fact embedded in K.’s recital of Darlene’s statement—that Darlene acknowledged Clark’s sexual abuse of K.—was proven by other more direct evidence, including K.’s and Darlene’s own testimony about those events. Furthermore, Darlene testified about the meeting at the restaurant and was cross-examined about the statements. Thus, assuming without deciding K.’s testimony about Darlene’s statements at the restaurant was hearsay, any error in admitting it was harmless.

### **Expert Testimony**

¶26 Clark argues the trial court erred in denying his motion to preclude testimony of one of the state’s expert witnesses, Wendy Dutton. Although Dutton had not been provided with materials relevant to the case, the state offered her testimony to establish that young victims of sexual abuse often recant true statements about the abuse they have suffered and will frequently delay reporting abuse for years. Clark sought to exclude Dutton on the grounds she lacked any knowledge of the case and her testimony would be prejudicial and unhelpful to the jury. On appeal, he argues the testimony was admitted in violation of

Rule 403, Ariz. R. Evid., and “prevent[ed] the jury from being the true trier of fact.”<sup>4</sup> “We review a trial court’s evidentiary decisions for an abuse of discretion, giving deference to its determination on relevance and unfair prejudice . . . .” *State v. Smith*, 215 Ariz. 221, ¶ 48, 159 P.3d 531, 542 (2007) (citations omitted).

¶27 Rule 702, Ariz. R. Evid., provides: “If scientific, technical, or other specialized

knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Jurors are not presumed to know how abused children behave. *State v. Lindsey*, 149 Ariz. 472, 473-74, 720 P.2d 73, 74-75 (1986). Accordingly, this court has held that common behavioral characteristics of childhood sexual abuse victims is a proper area for expert testimony. *State v. Curry*, 187 Ariz. 623, 628-29, 931 P.2d 1133, 1138-39 (App. 1996).

¶28 The trial court did not abuse its discretion in denying Clark’s motion and permitting Dutton to testify. Dutton provided the jury with general information about the behavior of victimized children. In accordance with our state’s limitations on expert

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<sup>4</sup>Although Clark also alleges the court “fail[ed] to comply with the *Frye* test” in his opening brief, he essentially challenges the utility of Dutton’s testimony, not the acceptance of her methods and conclusions within the scientific community. *See generally Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). In any event, the court could admit Dutton’s testimony without conducting a *Frye* hearing. *See State v. Curry*, 187 Ariz. 623, 629, 931 P.2d 1133, 1139 (App. 1996); *State v. Varela*, 178 Ariz. 319, 325-26, 873 P.2d 657, 663-64 (App. 1993).

testimony on this topic, she did not address the specific behavior of the victim in this case. *See Lindsey*, 149 Ariz. at 475, 720 P.2d at 76 (expert on victim behavior cannot testify directly to “probabilities of the credibility of another witness”).

¶29 Clark correctly notes that the trial court made no findings on the record in balancing the probative value of Dutton’s testimony against the danger of undue prejudice. *See Ariz. R. Evid.* 403. But, although explicit findings are preferable, they are “not necessary when the basis for the trial court’s ruling appears in the record.” *Beasley*, 205 Ariz. 334, ¶ 25, 70 P.3d at 468. Clark suggests that Dutton’s testimony was misleading or needless because “the trial did not focus on the inconsistencies, recantation or delay inherent to the victim’s statements.”<sup>5</sup> Yet Clark’s defense—that K.’s allegations against him were untruthful and the product of manipulation by Darlene and Sherry—made the timing and nature of her accusations, and possible explanations therefor, a relevant and probative topic. Notably, Clark’s cross-examination of K. highlighted inconsistencies in her reports of abuse. The record therefore supports the trial court’s ruling.

### **Sufficiency of the Evidence**

¶30 Finally, Clark argues that the state failed to establish he had committed certain offenses on the dates alleged in the indictment and, consequently, the trial court erred in denying his motion for a judgment of acquittal on counts three, four, and five. A trial court

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<sup>5</sup>Clark asserts on appeal that he did not cross-examine K. But the record demonstrates otherwise.



should grant a judgment of acquittal pursuant to Rule 20, Ariz. R. Crim. P., “only where there is no substantial evidence to warrant conviction.” *State v. Fernane*, 185 Ariz. 222, 224, 914 P.2d 1314, 1316 (App. 1995). This court “will find reversible error based on insufficient evidence only where there is a complete absence of probative facts to support a conviction.” *Id.* ““If reasonable [persons] may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.”” *State v. Davolt*, 207 Ariz. 191, ¶ 87, 84 P.3d 456, 477 (2004), *quoting State v. Rodriguez*, 186 Ariz. 240, 245, 921 P.2d 643, 648 (1996) (alteration in *Rodriguez*). It is the jury’s role to weigh the credibility of witnesses and resolve inconsistencies in their testimony. *State v. Lee*, 151 Ariz. 428, 429, 728 P.2d 298, 299 (App. 1986). We thus resolve all conflicts in the evidence in favor of sustaining the verdict. *State v. Girdler*, 138 Ariz. 482, 488, 675 P.2d 1301, 1307 (1983).

¶31 Count three of the indictment alleged that between March 15, 2006, and April 15, 2006, Clark committed sexual conduct with a minor under the age of fifteen by inserting his finger into K.’s vagina. K. testified that the digital penetration had occurred when she was in fifth grade (2004-2005) as well as sixth grade (2005-2006). She also testified Clark “st[uck] his finger inside [her] private” when her mother worked at a convenience store. Darlene testified that she began working at the store on April 3, 2006. Notwithstanding any inconsistencies in the record, sufficient evidence was presented that Clark committed the offense at the time alleged in count three of the indictment.

¶32 Count four alleged that between March 15, 2006, and April 15, 2006, Clark committed sexual conduct with a minor under fifteen by inserting his penis into K.’s vagina. K. testified that during the last incident of sexual abuse, which occurred between “[l]ate March and early April” of 2006, Clark “put his private part in [her].” This testimony was sufficient evidence to support the conviction on count four of the indictment. *Cf. State v. Jerousek*, 121 Ariz. 420, 427, 590 P.2d 1366, 1373 (1979) (“In child molestation cases, the defendant can be convicted on the uncorroborated testimony of the victim.”).

¶33 Count five alleged that in 2002 Clark “first . . . molested the victim by touching her vagina with his hands.” K. testified that the sexual abuse first started when Clark “rub[ed]” her. Although K. estimated this had occurred when she was in fifth grade (2004-2005), her mother testified she was “shock[ed]” to discover Clark performing oral sex on K. one night in 2002. Because we must resolve conflicts in the evidence in support of the jury’s verdict, there was sufficient evidence for the jury to conclude Clark had first molested K. in 2002 as alleged in count five of the indictment.

### **Conclusion**

¶34 For the foregoing reasons, we affirm Clark’s convictions and sentences.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge